

P O R T E R | S C O T T

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Attorneys for Defendants

COUNTY OF SACRAMENTO and ANNE MARIE SCHUBERT

Exempt from Filing Fees Pursuant to Government Code § 6103

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARNOLD ABRERA,

Plaintiff,

v.

CASE NO. 2:22-cv-01162-JAM-DB

**DEFENDANTS COUNTY OF SACRAMENTO
AND ANNE MARIE SCHUBERT'S NOTICE
OF MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

GAVIN NEWSOM, in his official capacity
as Governor of the State of California; ROB
BONTA, in his official capacity as Attorney
General of the State of California; ANNE
MARIE SCHUBERT, in her official
capacity as County of Sacramento District
Attorney; COUNTY OF SACRAMENTO;
BOBBY DAVIS, in his official capacity as
Chief of the Elk Grove Police Department;
JONATHAN P. HOBBS, in his official
capacity as the City Attorney for the City of
Elk Gove; CITY OF ELK GROVE,

Defendants.

Date: January 9, 2024

Time: 1:30 p.m.

Courtroom: 6

Complaint Filed: 7/5/2022

First Amended Complaint Filed: 9/2/2022

PLEASE TAKE NOTICE that on January 9, 2024 at 1:30 p.m., or as soon thereafter as the
matter may be heard, in Courtroom 6 of the United States District Court, Eastern District of California,
located at 501 I Street, Sacramento, CA 95814, Defendants COUNTY OF SACRAMENTO and ANNE
MARIE SCHUBERT will move to dismiss Plaintiff ARNOLD ABRERA's First Amended Complaint,

pursuant to Federal Rules of Civil Procedure (“F.R.Civ.P.”) 12(b)(6), and 12(f) on the following grounds:

1. The Court should decline jurisdiction under *Penn General*.
2. Alternatively, *Younger* abstention applied.
3. The claims are not ripe because Plaintiff has not alleged compliance with California Penal Code Sections 12021.3.1 and 33850 to legally lay title to the two rifles, and his alleged refusal to do so warrants dismissal, and/or because he is pursuing return in state court.
4. Plaintiff does not have Article III standing for facial challenges and/or the Second Amendment does not protect the right to possess specific firearms.
5. Plaintiff’s claims against the District Attorney in her official capacity for prosecuting crimes and any claimed policies for gun prosecution is tantamount to an action against the State of California, to which Monell does not apply.
6. Plaintiff’s tenth claim for damages is barred by Eleventh Amendment Immunity.
7. Declaratory relief against the District Attorney is not appropriate under the Ex Parte Young doctrine exception to Eleventh Amendment immunity.
8. Plaintiff’s Eleventh and Twelfth claims should be dismissed as moot.
9. Plaintiff has no standing to assert injunctive relief.

Pursuant to the Court’s Order re Filing Requirements (ECF No. 11-2), the parties have met and conferred regarding the content of the First Amended Complaint (and its prior iteration) and any potential resolution prior to the filing of this motion, but could not reach a resolution. Specifically, counsel for moving Defendants transmitted lengthy correspondence, dated August 15, 2022, which included points and authorities and argument, to which counsel for Plaintiff responded in a lengthy letter dated August 18, 2022, which also included points and authorities and argument, to which counsel for Defendants responded in a lengthy letter dated September 9, 2022, which again included points and authorities and argument.

This Motion to Dismiss is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities in support thereof, the entire Court file and any other pleadings, evidence, or legal arguments that may be presented at the time of the hearing to the extent one is held.

Dated: October 16, 2023

Respectfully submitted,

PORTER SCOTT
A PROFESSIONAL CORPORATION

By /s/John R. Whitefleet
John R. Whitefleet
Attorney for Defendants